

109TH CONGRESS
1ST SESSION

S. 1693

To amend the Internal Revenue Code of 1986 to allow the temporary expensing of equipment used in refining of liquid fuels.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2005

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow the temporary expensing of equipment used in refining of liquid fuels.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TEMPORARY EXPENSING FOR EQUIPMENT**
4 **USED IN REFINING OF LIQUID FUELS.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-
6 ter 1 of the Internal Revenue Code of 1986 is amended
7 by inserting after section 179D the following new section:

8 **“SEC. 179E. ELECTION TO EXPENSE CERTAIN REFINERIES.**

9 **“(a) TREATMENT AS EXPENSES.—**A taxpayer may
10 elect to treat the cost of any qualified refinery property

1 as an expense which is not chargeable to capital account.
 2 Any cost so treated shall be allowed as a deduction for
 3 the taxable year in which the qualified refinery is placed
 4 in service.

5 “(b) ELECTION.—

6 “(1) IN GENERAL.—An election under this sec-
 7 tion for any taxable year shall be made on the tax-
 8 payer’s return of the tax imposed by this chapter for
 9 the taxable year. Such election shall be made in such
 10 manner as the Secretary may by regulations pre-
 11 scribe.

12 “(2) ELECTION IRREVOCABLE.—Any election
 13 made under this section may not be revoked except
 14 with the consent of the Secretary.

15 “(c) QUALIFIED REFINERY PROPERTY.—

16 “(1) IN GENERAL.—The term ‘qualified refin-
 17 ery property’ means any refinery or portion of a re-
 18 finery—

19 “(A) the original use of which commences
 20 with the taxpayer,

21 “(B) the construction of which—

22 “(i) except as provided in clause (ii),
 23 is subject to a binding construction con-
 24 tract entered into after June 14, 2005,
 25 and before January 1, 2010, but only if

1 there was no written binding construction
2 contract entered into on or before June 14,
3 2005, or

4 “(ii) in the case of self-constructed
5 property, began after June 14, 2005,

6 “(C) which is placed in service by the tax-
7 payer after the date of the enactment of this
8 section and before January 1, 2014,

9 “(D) in the case of any portion of a refin-
10 ery, which meets the requirements of subsection
11 (d), and

12 “(E) which meets all applicable environ-
13 mental laws in effect on the date such refinery
14 or portion thereof was placed in service.

15 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—
16 For purposes of paragraph (1)(A), if property is—

17 “(A) originally placed in service after the
18 date of the enactment of this section by a per-
19 son, and

20 “(B) sold and leased back by such person
21 within 3 months after the date such property
22 was originally placed in service,

23 such property shall be treated as originally placed in
24 service not earlier than the date on which such prop-

1 erty is used under the leaseback referred to in sub-
2 paragraph (B).

3 “(3) EFFECT OF WAIVER UNDER CLEAN AIR
4 ACT.—A waiver under the Clean Air Act shall not be
5 taken into account in determining whether the re-
6 quirements of paragraph (1)(E) are met.

7 “(d) PRODUCTION CAPACITY.—The requirements of
8 this subsection are met if the portion of the refinery—

9 “(1) increases the rated capacity of the existing
10 refinery by 5 percent or more over the capacity of
11 such refinery as reported by the Energy Information
12 Agency on January 1, 2005,

13 “(2) enables the existing refinery to process
14 qualified fuels (as defined in section 29(c)) at a rate
15 which is equal to or greater than 25 percent of the
16 total throughput of such refinery on an average daily
17 basis, or

18 “(3) replaces any portion of a refinery damaged
19 or destroyed by Hurricane Katrina.

20 “(e) ELECTION TO ALLOCATE DEDUCTION TO COOP-
21 ERATIVE OWNER.—If—

22 “(1) a taxpayer to which subsection (a) applies
23 is an organization to which part I of subchapter T
24 applies, and

1 “(2) one or more persons directly holding an
2 ownership interest in the taxpayer are organizations
3 to which part I of subchapter T apply,
4 the taxpayer may elect to allocate all or a portion of the
5 deduction allowable under subsection (a) to such persons.
6 Such allocation shall be equal to the person’s ratable share
7 of the total amount allocated, determined on the basis of
8 the person’s ownership interest in the taxpayer. The tax-
9 able income of the taxpayer shall not be reduced under
10 section 1382 by reason of any amount to which the pre-
11 ceding sentence applies.

12 “(f) INELIGIBLE REFINERIES.—No deduction shall
13 be allowed under subsection (a) for any qualified refinery
14 property—

15 “(1) the primary purpose of which is for use as
16 a topping plant, asphalt plant, lube oil facility, crude
17 or product terminal, or blending facility, or

18 “(2) which is built solely to comply with consent
19 decrees or projects mandated by Federal, State, or
20 local governments.

21 “(g) REPORTING.—No deduction shall be allowed
22 under subsection (a) to any taxpayer for any taxable year
23 unless such taxpayer files with the Secretary a report con-
24 taining such information with respect to the operation of

1 the refineries of the taxpayer as the Secretary shall re-
 2 quire.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 1245(a) of the Internal Revenue
 5 Code of 1986 is amended by inserting “179E,” after
 6 “179D,” both places it appears in paragraphs (2)(C)
 7 and (3)(C).

8 (2) Section 263(a)(1) of such Code is amended
 9 by striking “or” at the end of subparagraph (J), by
 10 striking the period at the end of subparagraph (K)
 11 and inserting “, or”, and by inserting after subpara-
 12 graph (K) the following new subparagraph:

13 “(L) expenditures for which a deduction is
 14 allowed under section 179E.”.

15 (3) Section 312(k)(3)(B) of such Code is
 16 amended by striking “or 179D” each place it ap-
 17 pears in the heading and text and inserting “179D,
 18 or 179E”.

19 (4) The table of sections for part VI of sub-
 20 chapter B of chapter 1 of such Code is amended by
 21 inserting after the item relating to section 179D the
 22 following new item:

“Sec. 179E. Election to expense certain refineries.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to properties placed in service after
3 the date of the enactment of this Act.

